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No. 05-1567

In the

Supreme Court of the United States

MYRNA GREGORIA OCHOA-CARRILLO
Petitioner

v.

ALBERTO R. GONZALES, ATTORNEY GENERAL
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Pursuant to Supreme Court Rule 15.6, Petitioner addresses the following new points raised in the Brief in Opposition.

I. THE 8TH CIRCUIT AND THE GOVERNMENT'S INTERPRETATION OF REAL ID ACT OF 2005, PUB L. NO 109-13, DIV B, 119 STAT. 302, IS CONTRARY TO THE CLEAR LANGUAGE OF 8 U.S.C. 1252(e)(2) AND OBVIATES TO THE EXPRESS INTENT OF CONGRESS

The parties agree that limited habeas review survived the enactment of REAL ID Act of 2005, Pub. L., No. 109-13, Div. B. 119 Stat. 302. However, the interpretation propounded by the government, and validated by the Court of Appeals, would make the existence of habeas relief meaningless. Moreover, this interpretation frustrates the intent of Congress who expressly created this avenue for the review.

The Government's argument focuses on the basis that there is only habeas review of an expedited removal order and no apparent provision for habeas review of a "reinstated order of removal." However, an examination of the mechanics of the issuance and the consequences of an expedited removal order reveal that the Government's interpretation of this process absolutely vitiates any possibility of Habeas review. Once an expedited removal order is issued to an alien, that alien is immediately removed from the United States and is unable to seek review. Review of the order is only available when the alien re-enters and is subject to the reinstatement of the prior order. Following the theory of the Government and the 8th Circuit, the

reinstatement of the prior order eliminates any Habeas review. Such a result is contrary to the express intent of Congress as demonstrated by the plain language of the statute (8 U.S.C. 1252(e)(2).

As a practical matter, the issuance and execution of an expedited order of removal is the result of a brief encounter between an alien and an agent of the Federal Government. An agent of Customs and Border Protection or Immigration and Customs Enforcement, encounters an alien at a border point and then determines that alien to be inadmissible pursuant to 8 U.S.C. 1182(a)(6)(C) or 1182(a)(7). The agent then without further review, issues and executes an order of removal. An alien subjected to an expedited order of removal issued pursuant to 8 U.S.C. 1225(b)(1) has no judicial or administrative review of that order of removal.

Congress intended to create a path of review for these expedited orders of removal since they are subject to error due to their inherent lack of independent review. The plain language of 1252(e)(2) allows for habeas review of any determination under 8 U.S.C. 1225(b)(1). Further 1252(e)(2)(B) allows for habeas review to determine "whether the petitioner was removed under such section." Such an inquiry could only arise if the prior order was being reinstated.

Once an alien is removed from the United States they have no standing to bring a habeas action reviewing the expedited removal order. Once removed the alien has two methods of re-entry into the United States; legal or illegal.

An alien ordered removed from the United States is inadmissible for 10 years pursuant to 8 U.S.C. 1182(a)(9)(i)(I). However an alien may seek a waiver this ten year bar by filing for permission to reapply for admission

to the United States. If granted, the alien then can enter legally and has no need under such circumstances to seek review of the prior removal order as it's impact has been forgiven.

Alternatively, an alien who enters illegally could, theoretically, rush immediately to a district court to seek Habeas review of the expedited removal order. However, once the action is filed in the District Court that alien is subject to reinstatement. If the statutory analysis of the 8th Circuit and the Government is followed then, at the moment of reinstatement, jurisdiction reverts to the Court of Appeals subverting analysis by the District Court.

The more realistic scenario is the alien who seeks Habeas review once encountered by CBP or ICE agents and subject to reinstatement the result is the same. Once the order is administratively reinstated then, according to the 8th Circuit and the Government, Habeas jurisdiction is lost.

Myrna Ochoa-Carillo's position is that she is not the person named in the order. Therefore, she had no reason to approach the District Court seeking Habeas review because she was unaware of its existence. Thus, again through the analysis of the 8th Circuit and the Government Myrna has no access to the District Court where she can seek a thorough review of the facts surrounding her case which she is statutorily eligible for under 8 U.S.C. 1252(e)(2)(B).

An alien whom the government claims is subject to a prior expedited order of removal is subject to administrative reinstatement once they enter the United States. There is no set of facts in which that alien can seek Habeas review if the analysis of the 8th Circuit is allowed to stand or if this interpretation of these statues is correct

CONCLUSION

The holding of the 8th Circuit and the position of the Government eliminate the statutory Habeas review enacted by Congress. This holding leaves innocent persons without meaningful review of a devastating administrative action.. Given the human tragedy that is guaranteed in the simple act of denying this opportunity for review this Court should grant Certiorari and resolve the legal conflict.

Respectfully submitted,

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